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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 WILLIAM J. JONES,
12 CDCR #V-27774,

13 Plaintiff,

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15 vs.
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18 JOHN DOVERY, Director, CDCR;
19 L. SCRIBNER, Warden;
20 M.E. BOURLAND, Warden;
21 M. LEVIN, CMO; M. CORREA,
22 E. ORDUNO, RN; D. SAWTELL, RN;
23 J. KELLERMAN, CCII;
24 R. MADDEN, Lt. Cmdr.;
25 T. OCHOA, Asst. Warden;
26 V. KILPA, MTA; M. ZENDEJAS, C/O;
27 V. BACH, Sgt.; and G.T. JANDA, Warden;

28 Defendants.

Civil No. 06-1979 LAB (AJB)

ORDER:

**(1) RE-DIRECTING U.S. MARSHAL
TO EFFECT SERVICE OF
SUMMONS AND AMENDED
COMPLAINT UPON DEFENDANT
M.E. BOURLAND AT
CONFIDENTIAL ADDRESS
PREVIOUSLY PROVIDED**

AND

**(2) ORDERING PLAINTIFF TO
SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED
AS TO DEFENDANTS J. DOVERY,
D. SAWTELL, M. ZENDEJAS
AND V. KILPA FOR FAILURE
TO PROSECUTE PURSUANT
TO FED.R.CIV.P. 4(m)**

27 William J. Jones ("Plaintiff"), a state prisoner proceeding pro se pursuant to the Civil
28 Rights Act, 42 U.S.C. § 1983, has already been granted leave to proceed *in forma pauperis*

1 pursuant to 28 U.S.C. § 1915(a) [Doc No. 5]. While the Court found Plaintiff's original
2 Complaint required sua sponte dismissal without service pursuant to 28 U.S.C. § 1915(e)(2) and
3 1915A, it determined that Plaintiff's Amended Complaint sufficient to survive screening, and
4 thus, issued a summons and directed the United States Marshal to effect service of Plaintiff's
5 Amended Complaint upon all Defendants on February 27, 2007 pursuant to FED.R.CIV.P. 4(c)(2)
6 and 28 U.S.C. § 1915(d) [Doc. No. 10].

7 Now, almost a year later, Plaintiff has managed to effect service as to the majority of
8 Defendants, and they have moved to dismiss his Amended Complaint pursuant to FED.R.CIV.P.
9 12(b)(6) [Doc. No. 28]. That Motion has been referred to and remains pending before
10 Honorable Magistrate Judge Anthony J. Battaglia pursuant to 28 U.S.C. §636 (b)(1)(B) and S.D.
11 CAL. CIVLR 72.3. In the meantime, however, Plaintiff has been unable to successfully effect
12 service via the U.S. Marshal upon Defendants M.E. Bourland, J. Doverly, D. Sawtell, V. Kilpa
13 and M. Zendejas, despite two attempts to do so. *See* Doc. Nos. 13-14, 17-18, 33-37.

14 On May 25, 2007, the Court granted Plaintiff's Motion for an Extension of Time to Effect
15 Service pursuant to FED.R.CIV.P. 4(m) [Doc. No. 29]. In that Order, the Court noted and
16 discussed why Plaintiff's initial attempts at serving each of these individual defendants were
17 unsuccessful, directed the Clerk to provide him with 5 additional blank U.S. Marshal Form 285s
18 and found good cause to extend Rule 4's 120-day clock in order for him correct his service
19 errors. As to Defendant M.E. Bourland, the Warden at Calipatria State Prison at the time
20 Plaintiff's cause of action accrued, but whom had since retired, the Court went further and
21 directed the Deputy Attorney General to provide the U.S. Marshal with his forwarding address
22 in a confidential memorandum. *See* May 25, 2007 Order [Doc No. 29] at 6-7.

23 Service as Bourland remains unexecuted. In addition, service remains unexecuted as to
24 Doverly, Sawtell, Kilpa and Zendejas because Plaintiff attempted to serve them *not* by providing
25 the Marshal with each defendant's name and address where they could be located, but rather, by
26 simply addressing his new Form 285s to "Tiffany Hixon @ Attorney General's Office." [Doc.
27 Nos. 33-37].

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1 Ms. Hixon, the Deputy Attorney General currently representing the properly served
2 defendants in this case, returned each Form 285 to the U.S. Marshal on June 21, 2006—with a
3 memoranda stating:

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5 Plaintiff, William Jones, in pro per prison inmate has
6 attempted to serve Defendants Sawtell, Kilpa, Doverly, Bourland,
7 and Zendejas in care of me at my office. I cannot accept service on
8 behalf of these individuals. None of these individuals have
9 requested representation from our office. As such, I do not
10 represent them and cannot accept service on their behalf.

11 *Id.* In addition, however, Deputy Attorney General Hixon has indicated in a footnote included
12 in her Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss [Doc. No. 38 at 1 n.1],
13 that she has "provided the U.S. Marshalls [sic] with a confidential memorandum containing the
14 address of Defendant Bourland." *Id.*

15 Thus, to date, no proof of service has been filed as to any of these defendants. *See Walker*
16 *v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (where a pro se plaintiff fails to provide the
17 Marshal with sufficient information to effect service, the court's sua sponte dismissal of those
18 unserved defendants is appropriate under FED.R.CIV.P. 4(m)). While it is not clear why the U.S.
19 Marshal has yet to effect service upon Defendant M.E. Bourland at the confidential address the
20 Attorney General's Office has been ordered to, and apparently already has provided, it is also
21 unclear why Plaintiff has failed to correct his error in attempting to effect service upon the
22 remaining Defendants via the Attorney General.

23 Specifically, Plaintiff was put on notice that his attempt to serve Defendants Sawtell,
24 Kilpa, Doverly and Zendejas via the Deputy Attorney General was insufficient when Deputy
25 Attorney General Hixon returned his USM Form 285s to the U.S. Marshal with her memoranda
26 dated June 21, 2007, and the U.S. Marshal returned those attempts at service unexecuted on June
27 22, 2007 [Doc. Nos. 33-36]. Inexplicably, Plaintiff has failed to correct this new defect. *See*
28 *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987) (noting that plaintiff "may not remain
silent and do nothing to effectuate" U.S. Marshal service, but rather "[a]t a minimum ... attempt
to remedy any apparent defects [about] which [he] has knowledge.").

